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NOTES OF THE WEEK

The Late Dr. F. J. O. Coddington

We announce with regret the death at the age of 74 of Dr. Fitzherbert Coddington, who was stipendiary magistrate at Bradford for 16 years and a prolific writer of legal text-books. His books on the law of evidence for the guidance of police officers and Courts-Martial for young officers in the services are well-known and his little book *Advice on Advocacy* won high critical acclaim. He was also a frequent and valued contributor to this journal, the *Police Review* and many other publications. In fact it is true to say that so far as the police force was concerned he was the principal exponent of the legal aspects of their problems.

Fitzherbert John Osbourne Coddington was born on July 27, 1881, and educated at King Henry VIII School, Coventry and St. John's College, Oxford, to which he won a mathematical scholarship. He was a successful athlete at the University, representing it at boxing, swimming and water-polo.

After spells in schoolmastering and University lecturing, Coddington turned to the law and in 1912 gained first class honours in the LL.B. of Sheffield University at which he had previously been a lecturer in Mathematics. He was called to the bar the same year by the Inner Temple, also taking a first in his bar finals. He then practised at Sheffield and on the North-Eastern Circuit. In 1934 he succeeded Mr. Beaumont Morice as stipendiary magistrate at Bradford, an office which he filled with conspicuous success until 1950. He had previously proceeded to a Doctorate in Laws in 1935. Coddington was distinguished above all things by his complete grasp of the principles of magisterial law and the common sense and humanity with which he applied them. He was the very best type of stipendiary magistrate and his loss will be keenly felt in the city of Bradford and by his many friends.

Report of the Royal Commission on Marriage and Divorce

Questions of marriage and divorce are among the most controversial subjects, and it is no surprise to learn that the members of the Royal Commission were divided on many points. That fact adds interest to the report and certainly does not detract from its value.

Magistrates see more than most people of the marital troubles of other people, and we have no doubt they will be glad that the Royal Commission was united in the view that the remedy for divorce is the provision of greater facilities for marriage guidance and conciliation. It has been the policy of the magistrates' courts for some time past to explore the possibilities of reconciliation before deciding to make a separation or maintenance order, and efforts in this direction are even more important when divorce is being contemplated.

On questions about new grounds for divorce there was a divergence of opinion. With regard to desertion the majority recommend that, in order to encourage husband and wife to come together for a short period to find out if a lasting reconciliation can be effected, there should be a new ground of divorce constituted by two periods of desertion amounting together to at least three years, within a period of three years and one month before presentation of the petition. This is a suggestion we should like to see adopted. The present necessity for proving continuous desertion for three years must prevent many wives from giving their husbands a chance to show regret and improvement, through fear of losing a legal remedy if the experiment fails.

A further point on desertion arises about the presumption that a person intends the natural and probable consequences of his acts. The presumption is rebuttable. By a majority the Royal Commission recommends that proof of conduct of a grave and weighty nature such that a spouse could not reasonably be expected to continue with the conjugal life, which has compelled the spouse to break off cohabitation, should in future raise an irrebuttable presumption that the other spouse intended to bring the married life to an end. This would be applicable, of course, to proceedings in magistrates' courts.

Other points of interest to magistrates refer to collusion and condonation, orders for maintenance, and powers relating to children.

Maintenance Order Against Wife

It has often been suggested that in these days, when many wives earn considerable wages or salaries, maintenance orders might in certain circumstances be made against a wife. She is already liable in respect of national assistance. The Royal Commission recommends that a husband should be able to apply to the High Court or a magistrates' court for a maintenance order against his wife on the ground that he is destitute and unable to support himself and that his wife has more than enough to support herself and has not supported him.

Marriage Guidance

When marriage guidance councils were first introduced, there was a good deal of scepticism about their usefulness. They have, however, proved of practical value, and have undoubtedly prevented the break-up of many marriages.

The Royal Commission, which emphasizes the need to preserve marriage whenever possible, instead of dissolving it, recommends consideration of the existing arrangements for pre-marital education and training. The State, it is suggested, should give every encouragement to the existing agencies for matrimonial conciliation. Local authorities should be able to contribute to such agencies. If approved by the Minister such expenditure should rank for exchequer grant.

Asking for Trouble

No one is entitled to complain if, after neglecting to fill up his income tax return, he receives an arbitrary assessment. The inspector makes a rough estimate, and if the taxpayer makes no demur the inspector may well think his assessment was too low. Accordingly, if no return of income is made the next year, he naturally raises his estimate. What else can be expected ?

How foolish it may be to neglect making returns was demonstrated in a recent county court case, when an application for discharge in bankruptcy was granted to a woman who had been in business and failed. She had had to pay the inland revenue authorities over £2,400, according to assessments of her income over a period of years during which she had consistently failed to send in returns. She told the Judge she had always thrown letters from the income tax people into the waste-paper basket as soon as she received them. The first three arbitrary assessments were £300 each, and they were paid. After that came £500, and there being no objection, this was raised to £1,000. So debts mounted and bankruptcy followed. She was also fined for not making returns.

Here was a business woman, not a successful one it is true, but evidently quite honest and with no desire to evade taxation. Through nobody's fault but her own, she ran into a large debt, when in fact, as the learned Judge observed, probably she did not really owe any of it; but she had failed to make the returns which would have relieved her. Her excuse was that she was working so hard that she had no time to fill up forms. She probably realizes now that it would have paid her to consult an accountant.

The Judge said that if she had taken her difficulties to the inspector he would have explained everything. That is certainly common experience: tell the inspector the whole truth, and he will not fail to explain all about allowances and exemptions and will grant all proper reliefs. It is only those who try to deceive him who have cause to fear him.

Detention Centres

In the light of several years' experience of the working of the detention centre at Kidlington, which receives boys aged 14 and under 17, the Secretary of State has issued a circular (No. 37, dated March 15) which it is hoped will be of assistance to magistrates.

It is pointed out that the ordinary period of detention, namely three months, seems to be the maximum which can be imposed by a magistrates' court for an indictable offence, having regard to the provisions of s. 20 of the Magistrates' Courts Act, 1952. This is well worth pointing out, as we have heard of instances in which a magistrates' court has passed a sentence of six months in respect of an indictable offence dealt with summarily. This is a comparatively short-term treatment, and the circular states that experience suggests that the regime of the detention centre is most effective in the case of boys to whom a strictly regulated institutional life is entirely new. Detention centre treatment has generally been found unsuitable in the case of boys who have already undergone long term institutional treatment, or who show serious symptoms of mental disturbance, or who are dull mentally or unfit physically.

The circular goes on to say that the use of detention as a substitute for long-term training is seldom likely to be successful and may indeed prejudice the prospects of success of such training at a later stage.

Magistrates will welcome the statement in the circular that the warden at the detention centre will, at the request of the court, be prepared to furnish a report for the information of the justices on the completion of a boy's period of detention.

This will be of interest to the justices, and will to some extent help them to judge whether their decision to send the boy to the detention centre has been justified.

Driving Licence—Removal of Disqualification

In the latter part of 1955 we were asked on a practical point whether we considered that a partially successful application, under s. 3 of the Road Traffic Act, 1930, for the removal of a disqualification, which resulted in a reduction of the period originally fixed, was a bar to a subsequent application for the complete removal of the disqualification. We gave it as our opinion that it was not a bar, and that a magistrates' court should entertain the second application and consider it on its merits.

We now see that this matter has been considered by the High Court (*R.* v. *Manchester Justices, ex parte Gaynor* [1956] 1 All E.R. 610). In April, 1954, Gaynor was disqualified for three years. In May, 1955, on his application, justices reduced the period of disqualification to two years, which meant that it expired on April 27, 1956. In August, 1955, Gaynor sought to apply for the complete removal of the disqualification. on grounds of hardship which need not be detailed here. The justices refused to allow the application to be made on the ground that they had no jurisdiction to hear it because the previous application in May, 1955, had been granted and, in their view, a further application could be made only if the previous application had been refused. The applicant challenged their decision by an application to the High Court for an order of *mandamus*. The court granted the order of *mandamus*. The arguments and the court's reasons for their decision are not given in the report which appears as a Note.

Hints for the Chancellor (3)

" To recognize that the local authorities are responsible bodies competent to discharge their own functions and that . . . they exercise their responsibilities in their own right, not ordinarily as agents of government departments . . ."

That is what was said in the memorandum of guidance to the Local Government Manpower Committee (whose reports were signed on behalf of all

government departments participating) and quite rightly the County Councils Association reminds us of the statement in each issue of its *Gazette*.

It is difficult for the leopard to change his coat but more difficult still for certain of the denizens of Whitehall to relinquish petty power. We quote the case of approved schools as one more instance akin to those we have cited on previous occasions (and many that we have not) where control is excessive. In this case it is so minute that the managers have no real financial discretion at all: some examples will make this clear. Nothing can be done about staff without official sanction, the calculation of salary rates for headmasters and headmistresses must be confirmed in Whitehall, even a farm bailiff must be paid on a scale of salary controlled by the Home Office, while no housemaster can be promoted beyond the maximum of his existing salary scale without official approval. Neither are local wishes and discretion given much consideration in the making of appointments: appointments of headmasters and headmistresses must be approved and in certain cases of housemasters and housemistresses full details of candidates must be forwarded to the Home Office before an appointment is made.

Even on expenditure other than staffing the control is detailed and rigid: for example expenditure on the following heads is limited to a *per capita* allowance fixed by the Home Office and varied from time to time as they see fit:

Provisions	Household Requisites
Clothing	Library books, newspapers
Disposal outfits	and periodicals
Schoolroom Materials	Films and Recreation
	Pocket money

We believe that the serious waste of labour occasioned by these quite useless and unnecessary activities should be eliminated forthwith. Local authority managers do not need this tutelage, whatever may or may not be necessary elsewhere. It is admitted that they can run successfully welfare homes, children's homes, schools of all kinds and training colleges without the detailed help of Big Brother and the same obviously applies to approved schools. After all, local funds meet half of the cost as indeed they do also for remand home expenses. A speedy assessment of the need for continuance of many remand homes, which in a number of cases were established because of pressure from the centre, would be a more rewarding and sensible occupation than the composition of instructions about the number of pices of chalk to be allowed in the approved schoolroom.

Houses to Own in New Towns

In most of the new towns residents have shown an interest in buying their house, but heavy initial deposits and other expenses together with the burden of repayments have in the past operated as deterrents.

Harlow New Town Development Corporation have hit upon an ingenious scheme to get over these difficulties which obviates the necessity for initial deposits and legal expenses. The scheme will, in the first instance, be operated as a pilot scheme and applied to houses in the older established areas.

The new payments enable a would-be house owner to pay a sum additional to his weekly rent for a period (25 or 30 years, or a shorter period whichever he prefers) and at the end of this period, in return for a payment of only £200 plus the usual stamp duties and conveyancing charges, the house will belong to him, subject to an annual ground rent of £5, for all but the larger houses. These extra weekly payments will accumulate to his credit with interest after three years and if an entrant to the scheme wishes to withdraw he may get back his actual contributions or at any time pay off the whole or part of the balance.

The Development Corporation will continue to be responsible for external decorations and structural repairs until the house becomes the property of the tenant. Examples of extra payments under the schemes are: For a three bedroom terrace house, weekly payments 13*s*.–14*s*. (30 years), 18*s*.–19*s*. 4*d*. (25 years); for a three bedroom detached house with garage, monthly payments £5 4*s*. 10*d*. (30 years), £7 4*s*. 2*d*. (25 years).

Taxability of Part-time Firemen's Fees

In 1951 Parliament debated a proposed amendment to the Finance Bill of that year, the suggested new clause reading " (1) Any fees paid to part-time retained voluntary firemen for responding to fire calls, and referred to by statute as fire-call attendance and turn out fees, shall not be regarded as income for any of the purposes of the Income Tax Acts. (2) This section shall have effect from the beginning of the year 1951/52."

In the course of the debate these points were made.

The supporters of the amendment said there was an authorized establishment of 21,375 part-time retained firemen; they form the entire staff of most of the smaller fire stations of the country and part of the staff of the stations in many of the larger towns; they receive three forms of remuneration, first a retaining fee rising from £15 a year in the case of the ordinary fireman to £45 a year in the case of the station officer, secondly a turn-out fee of 10*s*. for the first two hours of a fire and 3*s*. for each subsequent hour, and thirdly a fire-call attendance fee of 5*s*. an hour for each attendance at the fire station; they are much cheaper to employ than full-time firemen both in relation to pay and standards of accommodation, the difference in pay cost was stated at that time as £1,530 for a full-time man as against £85 for a part-time man; and that the taxation of their fees constituted an injustice, and a false economy because the stage was being reached when a breakdown of the voluntary service could be envisaged. (Since 1951 payments have been increased, the current figures being as prescribed in the Fire Services (Conditions of Service) Regulations, 1954. Thus the retaining fee now rises from £30 a year for a fireman to £62 a year for a station officer, the fireman's turn-out fee is 12*s*. for the first two hours and 5*s*. an hour thereafter, and the attendance fee is 7*s*. for the first hour and 5*s*. an hour thereafter.)

The opponents of the proposal said that the fees were unquestionably of the nature of income, they were a payment for services and it was a cardinal principle that payments for services should be subject to income tax; further that the proposers of the amendment were asking to be done through taxation relief what should be done by way of pay increases and that it was quite wrong in principle to seek increases in pay through remissions in taxation for one particular section of workers.

In the result the amendment was defeated.

The matter has recently again come into prominence because of the action of inland revenue officials in investigating the tax position of part-time firemen in certain areas and claiming arrears of tax on fees for periods of up to six years. This action has quite naturally caused a great deal of resentment but is of course correct, although the delay in assessment is unfortunate. If it is felt in the particular circumstances that any action is justified there are at least three possible courses open. One would be to increase the scale of payments (as we have noted, this was done in 1954 and we understand that a further claim has been considered recently); another would be to assess the expense

incurred by part-time firemen in executing their duties, for example wear and tear of clothing, allowance towards upkeep of bicycles, cost of fuel for provision of hot water for cleaning on return from fires, and either to agree with the tax inspectors an allowance to cover these expenses or to reimburse the firemen; a third would be to reimburse to the firemen the tax charged to them: this is an undesirable course although it is followed for police rent allowances.

MODERN MAINTENANCE DECISIONS

[CONTRIBUTED]

It is interesting that after many years of decisions relating to the form of maintenance orders in relation to taxation two recent cases have been decided, namely *J.— P.C.* v. *J.— A.F.* [1955] 3 W.L.R. 72 and *Jefferson* v. *Jefferson* [1956] 1 All E.R. 31, where orders of maintenance had been made in an inappropriate form. There was a distinction between the cases as the latter related to small maintenance payments of a weekly sum of under £2 where the relevant income tax authority is contained in the Income Tax Act, 1952, ss. 205 and 207 whereas the other case came within the larger orders for maintenance and came within ss. 169 and 170 of the Income Tax Act, 1952. Both orders were framed as " at the rate of a certain sum free of tax " and under both sets of legislation the intention of the registrar was not expressed in the order. In the case of *Jefferson* v. *Jefferson* an order was made at the rate of £52 a year free of tax. For some time this amount was paid but then the wife claimed arrears on the basis of the proper payment being £1 16*s*. 4*d*. a week until April 5, 1955 (whilst the standard rate of tax was 9*s*. and afterwards at £1 14*s*. 9*d*. a week because the standard rate was reduced to 8*s*. 6*d*. The court by a majority of two to one found for the wife in her claim (Lord Justice Denning dissenting). Under a small maintenance order the husband is not entitled to deduct tax; the reason for this being as stated by Hodson, L.J., at p. 1008 in order to avoid " a husband of moderate means paying tax at the full rate which would be reclaimed subsequently by his wife." It was held, however, that at the rate of £52 per year free of tax meant that the husband would have to pay in effect at the rate of such sum as would after deduction of tax at the standard rate result in the sum named. He would pay this amount in full and the wife would, if she was not paying at the higher rate of income tax, recover some or all from the income tax authority. The amount she received she was not obliged to return to her husband. The tax position of the husband was met by a provision in s. 206 (3) that sums paid by him in respect of small maintenance payments could be deducted from his earnings in computing total income. All the judges were agreed that it was proper in making small maintenance orders to make no reference to tax. In *J.* v. *J.*, *supra*, an order was made at the rate of £5 10*s*. a week free of tax. This was the larger form of maintenance order. Such an order was held to have the effect of creating an order for such a sum as after deduction of tax at the standard rate would produce £5 10*s*. a week. This was not the intention of the registrar as the wife, having received the £5 10*s*. a week clear, might in addition be able to recover tax and in fact would have been able to do so. Under these circumstances the order was amended to a figure of £7 a week less tax which would in reality, with tax adjustments taken into account, give the wife a clear £5 10*s*. which was the original intention.

Important decisions have been recently reached on how far financial considerations concerning the husband and wife affect the basis of maintenance. In *J.* v. *J.*, *supra*, a husband who did not pay tax because his taxable income during the previous three years had remained under £70 was ordered to pay maintenance at the rate specified above, because his ability to provide money by overdrafts and loans allowed him to live at a rate of £1,100 a year with the use of a car. In the same way a man technically without means may be called upon to pay national insurance (*Longsdon* v. *Minister of Pensions and National Insurance* [1956] 1 All E.R. 83). The case of *In re W*—(*Infants*) *In re Guardianship of Infants Act*, 1886–1925, [1956] 1 All E.R. 368, a man who had virtually by agreement submitted to an order for payments for the maintenance of his two children who were living with their mother asked the court for a reduction, and the order was reduced to 22*s*. 6*d*. for each child. The Guardianship of Infants Act, 1925, s. 3 (2) provides that " the father shall pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the court having regard to the means of the father may think reasonable." The mother did not appear and the father by his evidence itself presumably justified the reduction. The question did of course arise how far the position of the mother and other persons could be taken into account. It is clear that in some circumstances the income of the mother can be taken into account, Birkett, L.J., gave an instance where the mother has a house of her own and an independent income of her own of perhaps £1,000 a year and the husband is merely earning £6 or £7 a week. He suggests that the mother's income shall not properly be taken into account where she is working, and thereby sacrificing the best interests of the child by not personally keeping him under her care. The judgment of Evershed, M.R., suggests what points the court should take into account. " What does the infant need ? For that purpose the court has to consider the age of the infant, whether it is at school or in a perambulator or at a university—these are all relevant considerations—whether it has been brought up in a gold lined cradle or whether it has not. That is not immaterial. I mean its standard of life hitherto is by no means immaterial. It would surely quite plainly be permissible to consider whether it had funds provided for its maintenance by some deceased grandparent or aunt; and why should it not be considered how far its mother is able to maintain it ? I can see no reason for excluding that one circumstance which seems to me to be very relevant from all the other relevant circumstances which have to be considered." An interesting point arises if the mother marries again. There have been no cases to the knowledge of the writer within the past year, which directly affect this point, but a recent case *Mead* v. *Clarke Chapman and Co., Ltd.* [1956] 1 All E.R. 45, on a different matter, gives some indication of the value of a stepfather. In that case an infant's father was killed and the mother of the child remarried. In awarding £200 damages to the infant it was pointed out by the learned judge that a stepfather was not in the same position as a real father, in that he was not legally responsible for maintainance (National Assistance Act, 1948, s. 42 (1)) and that he may not feel inclined to give the child the same advantages that a real father would do. This decision may have some relevance in considering the basis of maintenance when the mother has remarried. The financial position of the mother in so far as it is taken into consideration must be viewed with the proviso that, so far as the infant is concerned, a stepfather is not viewed by the court as the equivalent of the real father.

R.P.C.

THE ATTEMPT TO SUPPRESS MITCHAM FAIR, 1771—1775

By ERNEST W. PETTIFER, M.A.

The origin of Mitcham Fair is lost in the mists of antiquity, but it was approaching a crisis in its history in 1771. So much is clear from a very lengthy minute of the Surrey county justices passed at the Christmas sessions early in that year. This formidable document cannot be given in full, but it is to be found on p. 84 of vol. V of the *Surrey Quarter Sessions Records*, and those who care to read it will note that the justices had fully persuaded themselves, or had been persuaded, to believe that " the several common players of interludes, gamesters, and other loose and disorderly persons " who had, " for several years past, been accustomed to assemble and meet together at a certain pretended fair held in this County of Surrey not warranted by law, to wit at Mitcham Fair " must be suppressed. This, declared to be a standing order of quarter sessions, was to be enforced by the justices for the division of Wallington Hundred, or by any two of them.

On June 17, 1771, four justices—Sir Richard Hotham, knight, Mr. Samuel Atkinson, Mr. Oliver Baron, and Mr. John Heathfield met at the King's Head at Mitcham to commence the campaign. The plan evolved was simple and obvious; this was the outline—advertise the order in the *Daily Advertiser* and local gazetteers; print 300 posters and " stick them up in Mitcham and adjacent towns "; hand a copy to each local publican, fortifying the gift with a short homily on the evils of permitting drunkenness; muster that useful but, possibly, self-opinionated body of men, the local constables, with their chief, Mr. Strudwicke, (" and, by the way," said Sir Richard Hotham, " We will ask the old boy to dinner tonight "); and so forth.

On August 12, the quartette met again at the King's Head. One or two slight difficulties became apparent at the outset. One Mrs. Phipps appeared and applied to have leave granted to set up a roundabout—yes, believe it or not, a roundabout ! Mrs. Phipps heard Sir Richard hold forth at length, and left in some dudgeon. After dinner (at which the chief constable was present, of course), one John Dixon was brought before the justices by the constables, charged with having a game of chance playing in the fair (the fair, apparently, having now started), and " was committed to the cage in this town 'til tomorrow for further examination."

The court then adjourned until the following morning at " eleven o'clock punctually," and at that hour the four justices were ready for business. A woman applied for leave to " exhibit a show for children at a halfpenny each person, but was refused." Mr. Strudwicke, with his constables, was ordered " to parade round the fair and see if there were any shows or disturbances, and to report." John Dixon, the showman who had spent the night in the cage, was brought up, made proper submission and undertaking immediately to quit the town, was discharged. No reports came in of gaming, riots or tumults, and the committee adjourned to the following morning, August 14. Only two justices sat on that morning: the chief constable was directed to parade his constables, etc.: and, after a quiet day, the clerk of the peace was directed to prepare a report for a meeting on the 24th. Five justices were at the King's Head on the 24th when the clerk of the peace submitted the draft report. It recorded that the committee had sat during the whole of the three days, and that they " had had the sanction and approbation of most of the Gentlemen of the town," and that these gentlemen had favoured them " with their company and assistance during the said three days." Further, that they had refused all applications for leave to exhibit performances, and that the applicants had been told that the committee " had neither the power nor the inclination to consent, and bid them attempt it at their peril." As a result of this firm attitude, the report went on, there had been no riots nor tumults, no booths erected for tippling, and far fewer people at the fair, and " we flatter ourselves the same was not so great a nuisance and terror to the neighbourhood and travellers as has been the case for many years past . . . We received the thanks of the Gentlemen of the town for our attendance and conduct relative to the fair." The draft was unanimously adopted, and the report itself bore the signatures of the five justices.

On July 4, 1772, the committee should have resumed their labours, but only Mr. Oliver Baron put in an appearance. As the order of sessions required two justices at least, Mr. Baron ordered an adjournment for a week to give the clerk of the peace opportunity to whip up the absentees. On July 11, 1772, Sir Richard Hotham, Mr. Oliver Baron, and Mr. Samuel Plumbe, sat at the King's Head to resume the campaign. A new high constable, Mr. Barker, was in attendance, and the committee, recalling the previous year's easy victory, decided to adopt the same programme of advertisements, posters and warnings to the innkeepers, but to reduce the numbers of constables, though Mr. Barker was to attend throughout.

On Wednesday, August 12, 1772, two justices only put in an appearance, Mr. Oliver Baron and Mr. Samuel Plumbe, and settled down to their first day's hearing. The constables were first called in and briefed, and, to stimulate their zeal, the clerk of the peace was ordered to pay each man half-a-crown.

The first application was made " by a man for leave to exhibit a Lyon and some wild beasts, but the same was refused." The owner of the wild beasts, felt he could not take this lying down; he entered a claim of right, and demanded to know under what Act of Parliament he could be punished, but, receiving no satisfactory answer to this pertinent question, he eventually withdrew.

He was followed by a man who sought permission to exhibit a girl " who cut out curious figures with her toes, having no arms, but the same was refused."

At 10 o'clock at night the high constable suddenly remembered a pressing engagement at the Assizes on the morrow, and begged to be excused. At midnight a considerable riot took place in the town, " several of the constables were knocked down and two of them were cut about the head; but the Gentlemen who were present going out with the constables to their aid, five of the ringleaders were seized and lodged in the cage till tomorrow."

On the following day the only member of the committee to attend was Mr. Oliver Baron, his four colleagues appearing to have lost interest in the proceedings, but Mr. Baron boldly, albeit illegally, carried on alone.

John Smithers, brought before " the committee," for assaulting constable John Sanders, offered no sureties and was committed to the county gaol until the next sessions or until he found sureties to appear at sessions.

The other four men who had spent the night in the cage were next put up (a bargeman and two labourers from Wandsworth, and a labourer from Tooting). No constable or other person would " positively swear to an assault by any of them, and they were severally reprimanded and discharged." George Banns, one of the Wandsworth labourers, confessed that he had been drunk, however, and he was fined 5*s*.

" At a meeting of the committee appointed for the suppression of Mitcham Fair " held on the morrow, August 14, " present, Oliver Baron, Esq.," eight constables appeared and were charged as to their duties. Happily this proved to be a quiet day, and at midnight Mr. Baron was able to retire to his home. So ended the proceedings of 1772.

The campaign of 1773 opened with the usual meeting on July 18, present, Oliver Baron, Esq. The clerk of the peace was directed to undertake the usual advertising and printing, and was instructed that, if he received orders from Mr. Baron to do so, he was to call upon the rest of the committee to attend during the fair days.

On Thursday, August 12, the opening day of the fair, Mr. Oliver Baron had the unexpected support of Sir Richard Hotham, but there were no untoward incidents, and when the court sat on the morrow Mr. Oliver Baron was again alone, supported only by the high constable, Mr. Joseph Bish, and six constables.

" During the whole day all was peace and regularity except that one, Humphrey Davis was brought before the committee for insulting one of the constables, but on his asking pardon of the constable, and promising to quit the fair, he was discharged."

On the last day of the fair, when the court (Mr. Oliver Baron) assembled, it was supported by Mr. Joseph Bish and six constables " who had a charge delivered to them in like manner as on the two preceding days."

Reports of the constables at intervals informed the court that " there were no exhibitions of any kind, nor any appearance of the least disturbance " and at 11 *p.m.* they received the thanks of the court and were dismissed to their homes. And so ended Mitcham fair of 1773.

In 1774 and 1775 preliminary meetings of the committee (present, Mr. Oliver Baron) were held, and orders made for the usual advertisements, and the attendance of officers. Beyond the fact that the clerk of the peace was excused from attending, and that Mr. Lewis, the clerk to the justices for the Wallington division, was required to attend during the fair, there are no minutes of the committee's labours. But Mr. Baron must have been greatly fortified by the presence of an experienced clerk to justices with whom he could discuss points of law concerning fairs (although, of course, no questions of fact !).

Whether, at the last dinner at the King's Head, as the two faced each other across the dining table, Mr. Lewis uttered certain weighty words on the difficulties of suppressing fairs we shall never know. It is certain at least that for the next five years the meetings at the King's Head ceased, and that in 1780, at the Easter Sessions, the order for the suppression of Mitcham Fair was quietly rescinded. Doubtless a visitor to the King's Head today could view the room in which the indomitable Mr. Oliver Baron sat and organized his crusade. And, although it has been removed to another site, Mitcham Fair still flourishes, and, year by year, the successors of Mr. Oliver Baron, the Wallington justices, impose small fines for minor offences against the gaming laws committed by the showmen of the present day.

THE LIFE AND DEATH OF A BURIAL BOARD

[CONTRIBUTED]

The burial board was essentially a creature of the early Victorian era, a child of that spate of legislation which began with the Burial Act, 1852, for the metropolis and with the Burial Act, 1853, for the rest of the country. Until the advent of the burial grounds provided by the burial boards set up under ss. 10 and 11 of the first-named Act or the joint burial boards established under s. 23 of the same Act, unless one was either a national hero entombed with due pomp and ceremony in St. Paul's Cathedral or Westminster Abbey, or a belted earl interred in some ancient church or private park 'neath storied urn or animated bust; or unless one was a suicide buried at the cross-roads with stake melodramatically driven through the heart as a precaution against vampirism; or unless one was a Jew, a Quaker, an executed felon or an excommunicate, one's last resting-place on earth was almost inevitably the parish churchyard. In theory everyone, apart from certain persons excluded by ecclesiastical law, had the right of burial in the churchyard of his own parish. But with the massive population bulge of the Victorian epoch these parish churchyards in and around London and the great towns were fast filling up. Today, over 100 years later, we possess a local government service which can truthfully claim that it watches over the citizen from birth (indeed even before birth) until death. But in 1852 there was not the local government machinery to provide for the burial of the departed citizen for whose body there was no room in the parish churchyard. Hence the creation of the burial boards, both joint and otherwise. Local government was, however, not slow in catching up. First there was the Public Health Act, 1875, with its urban and rural sanitary authorities; then the Municipal Corporations Act, 1882, and later the Local Government Act, 1888. More pertinent to the case of the burial boards was the Local Government Act, 1894, which created urban and rural district councils and contained those sinister ss. 7 and 62 which were to spell the doom of so many burial boards. Section 7 (5) of the Act of 1894 provided that where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts (which included the Burial Acts) was co-extensive with the parish, all powers, duties and liabilities of that authority should, on the parish council's coming into office, be transferred to that council. This provision had the effect of disposing of many burial boards established for rural parishes. At one time the writer believed that the famous Amersham Burial Board whose yew trees had destroyed Mr. Crowhurst's cows and so provided the leading case of *Crowhurst* v. *Amersham Burial Board* (1878) 39 L.T. 355, was one of the victims, but research has revealed that this historic board has somehow contrived to live on under the title of the Amersham and Coleshill Burial Board. Section

62 of the Local Government Act, 1894, provided the executioners' axe for burial boards in an urban district which was held in the case of *Kirkdale Burial Board* v. *Liverpool Corporation* (1904) 68 J.P. 289, to include a borough. The first subsection of this section reads " Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority." *Lumley* contains this sombre footnote to s. 62, "The power given to the councils of urban districts by this section has been used to a great extent and has resulted in the disappearance of numerous burial boards which existed at the date of the Act." As a matter of interest there were 115 burial boards still functioning in 1927 but by 1955 the total had been reduced to less than 70. On December 31 last, the dwindling band was further diminished by the dissolution of the Addlestone Burial Board in Surrey and it is with the life history of that board that this article is concerned. Actually the Addlestone Burial Board was not one of those created in the first heyday of the early Burial Acts because its area is part of Chertsey urban district, one of those loosely-knit aggregations of small townships, villages and hamlets which even to this day regards itself as part of the English country scene. It was not indeed until August 21, 1895, that the vestry for the ecclesiastical parish of Addlestone, being informed that the parish churchyard was becoming full, passed a resolution under s. 10 of the Burial Act, 1852, to provide a new burial ground. This resolution was approved under s. 62 (2) of the Local Government Act, 1894, as it had to be by the almost brand new Chertsey U.D.C., and thereupon the vestry proceeded to set up the Addlestone Burial Board. It should perhaps be mentioned that the main effect of the Burial Act, 1853, was to apply the bulk of the provisions of the Act of 1852 to parishes not in the metropolis. By s. 24 of the Act of 1852 the burial board was to be a body corporate and to have power to take, purchase, and hold land for the purposes of the Act. Such burial board was to consist of not less than three nor more than nine persons, being ratepayers of the parish; provided that the incumbent of the parish was eligible for appointment at all times although not a ratepayer of the parish. The board had power to borrow money with sanction of the vestry and approval of the Treasury and, so far as the expenses of the burial board were not met by the income received, they were originally payable by s. 19 of the Act of 1852 out of the poor rate for the parish concerned. As a result of the Rating and Valuation Act, 1925, the poor rate was merged in the general district rate levied by the local authority. It appeared to be a mark of social distinction to serve as a member of the burial board, for there was never a dearth of candidates ready to oblige and indeed on one occasion at least it was necessary to take a poll of the ratepayers of Addlestone, pursuant to the Burial Boards (Contested Elections) Act, 1895, to fill vacancies. This is believed to have occurred during the first world war and offers an odd and intriguing example of the conduct of the phlegmatic British, when engaged in mortal combat with a deadly foe. But then perhaps Addlestone was always a little more odd than other places. After the initial laying out of the burial ground the Addlestone Burial Board was obliged to precept each year on the Chertsey U.D.C. until, with the population of the parish growing apace, it was found possible to run the burial ground at a profit and for nearly 20 years up to 1953 no precept was issued. Not that the precept had worried the Chertsey U.D.C. very much, as Addlestone ecclesiastical parish was co-terminous with the Addlestone ward of the urban district and from their inception the council had adopted differential rating for the several wards of the urban district. Right from the start the menace of s. 62 (1) of the Local Government Act, 1894, had lain over the burial board and this menace received perhaps a little emphasis when s. 269 of the Local Government Act, 1933, transferred the civil functions of the vestry to the urban district council, which in consequence became the body responsible for appointing the members of the burial board. Nevertheless the Chertsey U.D.C. were content to leave the Addlestone Burial Board to proceed happily on its way, particularly when the latter found it unnecessary to levy a precept. This blissful state of peaceful co-existence might have continued indefinitely but for the pressure of outside events. The first of these was that in 1953, thanks to the rising cost of labour and the fact that public taste was turning more to cremation than to earth burial, the burial board found it necessary after a lapse of nearly two decades to send a precept to the council. This might not have proved the culminating blow but for the fact that in the intervening years the background scenery had undergone several vital changes. In the first place the ecclesiastical authorities for the mother parish of Chertsey had informed the council that their parish churchyard was fast filling up, and that for financial reasons they could not contemplate the acquisition of any addition thereto. In consequence the council had made arrangements to provide a new cemetery under the Public Health (Interments) Act, 1879, the cost of which they proposed to spread over the urban district as a whole. Another change was that a modern treasurer had persuaded the council to abandon differential rating, and here came a further rub. In 1946 in consequence of representations made to them the council had taken a careful look at their ward boundaries. The original wards had been settled on the basis of the ecclesiastical parish boundaries existing in 1894, when the district was indisputably rural in character. Substantial development which had taken place in the following 50 odd years had made the ward division of 1894 look a very haphazard business indeed. Large urbanized areas remote from Addlestone had either become separate communities or attached to communities other than Addlestone. Therefore, with effect from October 1, 1947, the Surrey county council had approved a drastic revision of ward boundaries, and the creation of one entirely new ward carved out of the original Addlestone ward. So that when the burial board's precept of 1953 came to be levied as a special rate upon the old Addlestone ecclesiastical parish, as it had to be, not only was there the administrative difficulty of raising a rate over a district which was no longer officially recorded as a concise unit (the Chertsey rate book being written up in wards) but there was great public lamentation by the victims of this special rate, risen as it were from the dead past, especially by those victims who by this time lived outside the shrunken Addlestone ward, and wished to have no part of Addlestone whatsoever—particularly not of its burial board. Something had to be done about the matter and, even though the clerk of the urban council, himself a not inconsiderable ratepayer in the revised Addlestone ward, pointed out that the special rate represented so far as he was concerned less than the cost of 20 cigarettes a year, it was all in vain. Action was clearly necessary. Now as already indicated the Chertsey U.D.C. could at any time have abolished the Addlestone Burial Board by a simple resolution under s. 62 (1) of the Local Government Act, 1894. But this would provide no remedy because by s. 53 (3) of the same Act the council would still be obliged to recover any deficit (which they would inevitably incur in running the Addlestone burial ground) as a special rate upon the hereditaments within the old ecclesiastical parish. In fact it would be the very reverse of a remedy, because it would destroy the council's alibi that

the odious burial rate was due to the existence of the burial board. With the establishment of the council's new cemetery at Chertsey there was, however, something to be said for dissolving the Addlestone Burial Board, provided the cost of maintaining its burial ground could be spread over the district as a whole. The economics involved were rather akin to those of married life; not exactly the principle that two can live together more cheaply than one, but that two burial grounds can be run more cheaply by one burial authority than by two. At one stage the clerk of the Chertsey U.D.C. thought that his problem had been solved by a device explained to him by a colleague, in whose borough a burial board had existed for an area of approximately one-third of the borough. This borough council had abolished the burial board and had proceeded to spread the cost of maintaining the burial ground over the whole of the borough in three progressive stages, *viz:* (1) a resolution of the borough council under s. 62 (1) of the Local Government Act, 1894, taking effect from January 1, 1954; (2) an order by the Minister of Housing and Local Government made at the request of the borough council and in exercise of his powers under s. 271 of the Local Government Act, 1933, conferring on the borough council the functions of a parish council under s. 53 (4) of the Act of 1894, to make application to the county council for an order altering the boundaries of the area for which the borough council acted as a burial authority under the Burial Acts, 1852–1906, and (3) an order made by the county council under s. 53 (4) of the Act of 1894, extending as from April 1, 1954, the area of the burial authority under the above-mentioned Acts to the whole of the borough. But alas, the Addlestone Burial Board had come too late on the scene for this procedure to be of any use, because *Lumley* has this note to s. 53 (4) of the Act of 1894, " It is also doubtful whether an order under this subsection would be valid which purported to alter an area under the adoptive Acts which was not in existence on the appointed day." The idea then occurred to someone that, as the urban council had inherited the civil powers of the Addlestone vestry and of the vestries of all the other ecclesiastical parishes in the urban district, pursuant to s. 269 of the Local Government Act, 1933, it might be competent for the urban district council to pass a resolution declaring that the Addlestone burial ground should be deemed to have been provided for the urban district as a whole. If such a resolution was valid then a resolution under s. 62 (1) of the Act of 1894 would abolish the burial board, and the cost of the maintenance of the burial ground would automatically be a charge on the general rate over all the urban district. This suggestion was broached to the Ministry of Housing and Local Government, but a reply was received to the effect that the Minister was advised that it was doubtful whether the area of the Addlestone Burial Board could be altered in the manner suggested, nor could he advise any other way of overcoming the difficulty. After further deliberation it was decided that in any event the Addlestone Burial Board should be wiped out under s. 62 (1) of the Act of 1894, and that an attempt should be made to spread the cost of maintaining its burial ground over the whole of the urban district by appropriate provision in a General Purposes Bill which the council is promoting in the present session of Parliament. A resolution was accordingly passed by the Chertsey U.D.C. under s. 62 (1) of the Act of 1894, with effect from January 1, 1956. In a Bill which was lodged in both Houses of Parliament on November 25 last, there is included a clause which it is hoped will be approved, and so adjust the position with regard to the cost of running the Addlestone burial ground. Briefly this clause seeks to provide that as from January 1, 1956, the Addlestone burial ground shall be deemed to have been provided by the council under the Public Health (Interments) Act, 1879; that the Burial Acts, 1852 to 1906, except to such extent as they are expressed to apply to a burial ground provided under the Public Health (Interments) Act, 1879, shall cease to be in force with respect to the Addlestone burial ground, and that as from April 1, 1956, the expenses incurred by the council in connexion with such burial ground shall be charged on the whole urban district. Every step had so far been carried out with dignity and in proper form but as January 1 drew near a note of farce crept into the proceedings. The members of the burial board, who had for years held their monthly meeting in the board room within the lodge at the entrance to the burial ground, decided that they would have a last meeting which the chairman of the urban district council should be invited to attend, and give a receipt for the title deeds and other assets of the board—but on January 6, 1956! The clerk of the urban council, ever a stickler for observance of the law, pointed out with some force to his chairman that the burial board could not legally meet on January 6, 1956, as by then it would have ceased to exist and that a more appropriate date and time for such a ceremony was midnight on December 31, 1955. With equal force the chairman pointed out to the clerk that he had much better things to do on New Year's Eve than to attend the death-bed of a dying burial board in a burial ground, so the meeting took place on January 6, 1956, and in the event both the chairman and the clerk of the urban council were present. The clerk of the council had so impressed his point of view upon the clerk of the burial board that this officer had produced a somewhat cautious and curious agenda containing such items as " To receive the report of the late clerk of the board as to interments up to December 31, 1955 " and " To receive financial report from the late clerk of the board as to fees collected up to December 31, 1955." These gave the cue to the former chairman of the board to remark that since the previous meeting the clerk to the board had apparently died, but that his obliging ghost had turned up to help in those proceedings. Then the final act came, the handing over of the title deeds of the burial ground to the chairman of the urban council, who paid eloquent tribute to the numerous Addlestonians who had given their services to the board. This ceremony was photographed by and reproduced in the local press and underneath was printed the following mock obituary announcement: " BOARD, Addlestone Burial—On December 31, 1955, painlessly by Act of Parliament at the age of 60. Funeral privately at the burial board lodge, January 6, 1956. Flowers of speech only." After the formalities the meeting broke up into agreeable disorder. Much good advice was bestowed by the former members of the burial board on the new rulers of the destiny of Addlestone burial ground. Reference was made in particular to the function of approving inscriptions on tombstones, and the story was told of the domineering wife who erected a monument over her late husband's grave which bore the words " Rest in peace" and lower down " Until I come." This was capped by the yarn of the sorrowing widower who inscribed on his departed wife's grave-stone the epitaph " The light of my life has gone out," but who later contracted a second marriage, whereupon some local wag chalked on the scroll by way of postscript, " But I've struck another match." The clerk of the urban district council, pleased to find a new audience for an old joke, told the tale of the solicitor named Strange who directed that the only inscription on his tombstone should be the words " Here lies an honest lawyer " because people reading it would inevitably remark " that's Strange." But despite the comedy and the good humour it was impossible to avoid the nostalgic feeling that here was the passing of something that had its roots in a very different England from that in which we now live. The old order changeth yielding place to new. This was truly the end of an era.

" ERKENWALD."

LIABILITY FOR DAMAGE TO UNDERGROUND ELECTRIC CABLES

[CONTRIBUTED]

(*Continued from p.* 197, *ante*)

Although the principles laid down in *Holmes* v. *Mather*, *supra*, and *Stanley* v. *Powell*, *supra*, were concerned with trespass to the person, they are equally applicable to all forms of trespass. In *Ilford Urban District Council* v. *Beal and Judd* (1925) 89 J.P. 77, the plaintiffs owned a sewer laid partly under a river and partly under certain land abutting on the river. This land was purchased by the defendant Judd without any knowledge of the existence of the sewer. Her predecessor, Beal, had erected a concrete retaining wall across the plaintiffs' sewer, which ultimately moved and broke the sewer some years later, resulting in trouble at the plaintiffs' pumping station. In the action brought by the plaintiffs for damage to their sewer they did not rely upon the negligence of the defendants nor upon nuisance, but upon an action on the case. The plaintiffs relied upon the fact that their sewer was lawfully laid upon the defendants' property and had been damaged as a result of the erection and subsequent movement of the defendants' wall. They also contended that this was enough to establish the defendants' liability unless the defendants could show that the movement was caused by the act of God or the interference of a third person, and that the injury to the sewer was done before the defendant had reasonable opportunity of discovering and stopping the movement so caused. These contentions were, however, not accepted by Branson, J., who said at p. 77: "The problem may, I think, in the circumstances of the present case, be stated as follows. It being conceded that if the plaintiff's sewer had been laid on the surface of the defendant's land the defendant would have been bound to take care that her wall was not allowed to fall upon it or move against it so as to inflict damage upon it, does the fact that it was buried 8 or 9 *ft.* deep, and that she had not discovered, and could not, by the exercise of any reasonable care, have discovered its existence or whereabouts, make any difference to her liability? The law certainly imposes upon an occupier of land a very serious burden if he has at his peril to ensure that nothing done or omitted by him upon his land shall injure something buried beneath it, of which he did not know, and could not reasonably be expected to know, and I am not prepared to hold that such is the law, unless there is authority which compels me to do so. To my mind, however, the weight of authority is to the contrary of this proposition." Branson, J., also quoted with approval a statement in *Comyn's Digest* (Action upon the case for misfeasance) that an action upon the case does not lie where a man has not sufficient notice of his duty. Accepting this passage as a correct statement of the law, Branson, J., held that the plaintiff's action failed by reason of the fact that the defendant Judd did not discover, and could not by the exercise of any diligence in the circumstances reasonably have discovered, the existence of the sewer, and thus the existence and extent of her duty to the plaintiffs.

These cases, therefore, appear to establish the following propositions in respect of damage to an underground electric cable laid in private land:

(1) To substantiate a claim based on trespass the cable must have been laid with the authority of the owner and occupier of the land (*National Coal Board* v. *J. E. Evans & Co.* (*Cardiff*), *supra*) and such owner and occupier must be under a duty to ensure that reasonable care and skill are exercised in any use of the land likely to affect the cable: *Hughes* v. *Percival* (1883) 47 J.P. 772.

(2) The owner and occupier of the land under which the cable is laid will not be liable for damage to the cable if they did not discover, and could not by the exercise of any diligence in the circumstances reasonably have discovered, the existence of the cable (*Ilford U.D.C.* v. *Beal and Judd*, *supra*).

(3) Whilst knowledge of the existence of the cable and its position and depth cannot be imputed to the owner and occupier or any contractor merely by reason of the fact that pylons or other associated electrical apparatus are erected in the immediate vicinity of the cable (*National Coal Board* v. *J. E. Evans & Co.* (*Cardiff*), *supra*), it is submitted that it is upon the person responsible for an excavation to make inquiries where circumstances indicate such a course to a reasonable and prudent man, *e.g.*, indicators may be fixed at intervals on the surface of the ground above the cable indicating the line and depth of the cable, or the cable may be protected by reinforced concrete protecting slabs or special warning tiles. It is also important to note that s. 60 of the schedule to the Electric Lighting (Clauses) Act, 1899, requires each area electricity board to keep a map of the area showing the existing underground mains, service lines, and other underground works and street boxes. This section requires the line and depth below the surface of such mains and apparatus to be marked on the map, and that the map shall be duly corrected once in every year, and shall at all reasonable times be open to the inspection of all applicants.

(4) Was the action of the owner or occupier such as should be expected of a prudent person acting reasonably in all the circumstances of the case: *Holmes* v. *Mather*, *supra*, and *Stanley* v. *Powell*, *supra*?

In practice, an underground electric cable is usually damaged in the following circumstances:

(i) by the occupier of premises carrying out lawful excavations on the property such as digging his garden, and in the course of so doing damaging the service cable which is laid beneath the surface, and is so placed for the sole purpose of providing a supply of electricity to those premises; or

(ii) by another public utulity undertaking excavating near to the place where the electric cable is laid for the purpose of supplying their particular commodity, *e.g.*, gas or water;

(iii) by a contractor employed by the owner or occupier of land (*e.g.*, a local authority developing a housing estate) excavating a trench as in the *Evans* case, *supra*.

In case (i), the occupier's liability will be ascertained from a consideration of the principles enumerated in the cases previously mentioned.

In case (ii), these principles will also be applicable but, in addition, the damage may have been caused by a breach of statutory duty in the failure of the operating undertakers to serve an appropriate notice or make inquiry under either s. 26 of the Public Utilities Street Works Act, 1950, or s. 18 of the schedule to the Electric Lighting (Clauses) Act, 1899.

The employment of a contractor as in case (iii), however, involves a consideration of the common law principles governing the relationship of employers and independent contractors. The legal liability of the employer or the contractor, as the case may be, will depend upon the position of the parties under one or more of the following exceptions to the general rule that an

employer is not liable for the negligence of an independent contractor or his servants:

Exception 1

Where the act which the contractor is employed to do is one which, if done by the employer, would, though lawful in itself, be done at his peril. In *Hughes* v. *Percival* (1883) 47 J.P. 772, which was a case of withdrawal of support, namely a building operation involving interference with a party wall, whereby the party wall was weakened and the adjoining house fell, Lord Blackburn said: " The defendant had a right so to utilize the party wall, for it was his property as well as the plaintiff's; a stranger would not have had such a right. But I think the law cast upon the defendant, when exercising this right, a duty towards the plaintiff. I do not think that duty went so far as to require him absolutely to provide that no damage should come to the plaintiff's wall from the use he thus made of it, but I think that the duty went as far as to require him to see that reasonable skill and care were exercised in those operations which involved a use of the party wall, exposing it to this risk. If such a duty was cast upon the defendant he could not get rid of responsibility by delegating the performance of it to a third person. He was at liberty to employ such a third person to fulfil the duty which the law cast on himself, and, if they so agreed together, to take an indemnity to himself in case mischief came from that person not fulfilling the duty which the law cast upon the defendant; but the defendant still remained subject to that duty, and liable for the consequences if it was not fulfilled. This is the law I think clearly laid down in *Pickard* v. *Smith* (1861) 4 L.T. 470, and finally in *Dalton* v. *Angus* (1881) 46 J.P. 132. But in all the cases on the subject there was a duty cast by law on the party who was held liable. In *Dalton* v. *Angus* and in *Bower* v. *Peate* (1876) 40 J.P. 789, the defendants had caused an interference with the plaintiff's right of support." The judgment of Lord FitzGerald in this case also contains the following passage: " What is the law applicable ? What was the defendant's duty ? The law has been verging somewhat in the direction of treating parties engaged in such an operation as the defendant's as insurers of their neighbours, or warranting them against injury. It has not, however, reached quite to that point. It does declare that under such a state of circumstances it was the duty of the defendant to have used every reasonable precaution that care and skill might suggest in the execution of his works, so as to protect his neighbours from injury, and that he cannot get rid of the responsibility thus cast on him by transferring that duty to another. He is not in the actual position of being responsible for injury, no matter how occasioned, but he must be vigilant and careful, for he is liable for injuries to his neighbour caused by any want of prudence or precaution, even though it may be *culpa levissima*."

Assuming, therefore, that the cable has been lawfully laid (which was not the position in the *Evans* case) and the contractor is employed as an independent contractor, if the cable is damaged owing to the non-performance of a duty which the employer is legally required to perform, the employer will be responsible for such damage. This was the basis of the decision of the Court of Appeal in *Hardaker* v. *Idle District Council* (1896) 60 J.P. 196, where a district council, being about to construct a sewer under their statutory powers, employed a contractor to construct it for them. In consequence of his negligence in carrying out the work a gas main was broken, and the gas escaped from it into the house in which the plaintiffs (a husband and wife) resided, and an explosion took place, by which the wife was injured, and the husband's furniture damaged. In an action brought by the plaintiffs against the district council and the contractor it was held that the district council owed a duty to the public (including the plaintiffs) so to construct the sewer as not to injure the gas main; that they had been guilty of a breach of this duty; that, notwithstanding that they had delegated the performance of the duty to the contractor, they were responsible to the plaintiffs for the breach. The following passages from the judgment of Lindley, L.J., are apposite:

" The powers conferred by the Public Health Act, 1875, on the district council can only be exercised by some person or persons acting under their authority. Those persons may be servants of the council or they may not. The council are not bound in point of law to do the work themselves—*i.e.*, by servants of their own. There is nothing to prevent them from employing a contractor to do their work for them. But the council cannot, by employing a contractor, get rid of their own duty to other people, whatever that duty may be. If the contractor performs their duty for them, it is performed by them through him, and they are not responsible for anything more. They are not responsible for his negligence in other respects, as they would be if he were their servant. Such negligence is sometimes called casual or collateral negligence. If, on the other hand, their contractor fails to do what it is their duty to do or get done, their duty is not performed, and they are responsible accordingly. This principle lies at the root of the modern decisions on the subject, and the distinction between the two classes of cases is well illustrated by comparing *Reedie* v. *London and North Western Railway Co.* (1849) 4 Ex. 244, with *Hole* v. *Sittingbourne and Sheerness Ry. Co.* (1861) 3 L.T. 750. In the first of these cases the defendants employed a contractor to build a bridge. One of his men carelessly let a stone fall on the plaintiff, and the defendants were held not liable. In the second case the defendants' duty was to build a bridge which would open and let vessels pass. They employed a contractor, who built a bridge which would not open. The plaintiff was injured thereby, and the defendants were held liable for the consequences . . . I will take the law, however, as it was laid down by Lord Blackburn in *Dalton* v. *Angus, supra.* Lord Blackburn there said: " Ever since *Quarman* v. *Burnett* (1840) 6 M. & W. 499, it has been considered settled law that one employing another is not liable for his collateral negligence, unless the relation of master and servant existed between them. So that a person employing a contractor to do work is not liable for the negligence of that contractor or his servants. On the other hand, a person causing something to be done, the doing of which casts on him a duty, cannot escape from the responsibility attaching on him of seeing that duty performed by delegating it to a contractor. He may bargain with the contractor that he shall perform the duty, and stipulate for an indemnity from him if it is not performed, but he cannot thereby relieve himself from liability to those injured by the failure to perform it: *Hole* v. *Sittingbourne and Sheerness Ry. Co., supra; Pickard* v. *Smith, supra; Tarry* v. *Ashton* (1876) 40 J.P. 439. Lord Blackburn in this passage contrasts a contractor's negligence, which he calls ' collateral,' with failure on the part of a contractor to perform the duty of his employer. For the first the employer is not liable; for the second he is, whether the failure is attributable to negligence or not."

In applying the principle laid down by Lord FitzGerald in *Hughes* v. *Percival, supra,* to the facts of *Hardaker's* case, A. L. Smith, L.J., said: ". . . it appears to me that the district council in the present case owed the above-mentioned duty to the plaintiff, and that they have not performed it. Digging under gas pipes in use must necessarily be attended with risk, unless all reasonable precautions are taken to guard against it. If a gas pipe be left unsupported it is obvious that it may become fractured, and then an escape of gas, with all its attendant consequences, will necessarily result." The references to a gas pipe in this case are equally applicable to an electricity cable. Where a person employs a contractor to do work in a place

where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken, and if the necessary precautions are not taken he will be responsible for any injury arising therefrom, and he cannot escape liability by seeking to throw the blame on the contractor: *Hill* v. *Tottenham Urban District Council* (1898) 79 L.T. 495; *Penny* v. *Wimbledon Urban District Council* (1899) 63 J.P. 406; *Clements* v. *Tyrone County Council* (1905) 2 I.R. 542; *Pinn* v. *Rew* (1916) 32 T.L.R. 451; *cf. Hodgson's Kingston Brewery Co.* (1915) 80 J.P. 39; *Kimber* v. *Gas Light and Coke Co.* (1918) 82 J.P. 125. In *Penny* v. *Wimbledon Urban District Council*, *supra*, where a contractor had left a heap of soil in the roadway unlighted and unprotected, it was stated that if, *e.g.*, a pickaxe had been left in the roadway by one of the contractor's servants it would have been casual negligence only.

(To be concluded.)

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Byrne, JJ.)

R. *v.* HUDSON

March 19, 1956

Criminal law—Common law misdemeanour—Income tax—False statement tending to prejudice Revenue—False accounts sent to inspector of taxes.

APPEAL against conviction.

The appellant was convicted before SLADE, J., at Nottinghamshire Assizes on eight counts of an indictment charging him with making false statements tending to prejudice the Queen and the Public Revenue with intent to deprive the Queen, and was sentenced to fines totalling £2,600 and ordered to pay £1,500 costs. The indictment contained nine counts. Eight related to causing to be delivered to an inspector of taxes false profit and loss accounts and balance sheets, and on one of these the appellant was acquitted. The ninth related to a " certificate of full disclosure " which the appellant had sent to the inspector at the inspector's request.

The appellant carried on the business of a fruit grower in a large way, and his practice was to have his accounts prepared by an accountant. Some years afterwards these accounts were found to be false in that they had omitted a considerable number of receipts which ought to have been included as trading receipts. It was contended on behalf of the appellant that the offences charged were not known to the law.

Held, that the offence of making a false statement tending to prejudice the Revenue with intent to defraud was, and always had been, a common law misdemeanour, and included the offences charged in the indictment. The appeal must, therefore, be dismissed.

Counsel: *Mustoe, Q.C.*, and *Durand* for the appellant; *The Attorney-General (Sir Reginald Manningham-Buller), Elwes, Q.C.*, and *J. A. Grieves* for the Crown.

Solicitors: *Jaques & Co.*, for *Ollard, Ollard & Sessions*, Wisbech; *Solicitor for Inland Revenue.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

COUNTY BOROUGH OF SOUTHPORT: CHIEF CONSTABLE'S REPORT FOR 1955

The manpower position in Southport is not very satisfactory, the figures on December 31, 1955, being 177 authorized establishment and 142 actual strength. The former figure was increased by 16 because of the reduction in working hours which came into force in September, 1955, and the latter fell by nine during the year because of a wastage of 17, with only 10 new appointments. Only 47 applications for appointment were received during 1955, compared with 75 during 1954. The chief constable expresses the hope that the recent increase in pay may do something to attract a sufficient number of suitable applicants in order that the deficiency may be made good.

Although more crimes were reported in 1955 than in 1954 (1,055 and 1,002) the number recorded as crimes (825) was the lowest since 1945. Bicycle stealing seems to be a considerable cause of trouble in Southport. There were 67 such cases in 1955, and there were also 150 cases in which bicycles were reported stolen and were later found abandoned. Car owners in Southport may perhaps have cause to be thankful that people in the area temporarily without means of transport are content to borrow a humble bicycle rather than to insist upon taking a car, but this is no consolation to the bicycle owners who suffer as a result of these mean "offences." We say offences because the fact that an act is not punishable by the criminal law does not mean that it is not a serious offence against common decency and good manners. Many may not agree with us, but the old-fashioned stocks offered an opportunity for decent folk to express their opinion of people who behaved in such an unmannerly fashion, and that sort of public ridicule, with attendant discomfort, was perhaps more effective than is realized in our more enlightened days.

The total number of persons proceeded against for indictable offences showed an increase of five over 1954 and was made up of 158 adults and 98 juveniles.

The report emphasizes that in police work as in other matters prevention is better than cure, and refers to the steps taken in Southport to prevent crime. The press, cinema screen slides, display cards and notices to car owners were all used in an effort to enlist public support, and it is recorded that the occupiers of premises responded readily to police suggestions for making their premises more secure. There is also an appeal to car owners to lock car doors and close their windows so that juveniles may not be tempted to help themselves to property left in unattended cars. It is suggested than many first offences by juveniles are of this kind.

In the section of the report dealing with traffic problems we read that " hundreds of persons were cautioned during the year for exceeding the speed limit." The number of prosecutions for such offences is not recorded in the report. There is a plea " for bold and imaginative planning " by the local authority to increase off-street car parking facilities, and the chief constable, in this connexion, urges " that a comprehensive survey be made *now* of the centre of the town."

Seven hundred and eighty-seven people were dealt with during the year for non-indictable offences, an increase of 240 on the 1954 figures. Of the 1,003 reports submitted relating to offences in connexion with motor vehicles 284 were dealt with by written caution and 719 by prosecution. These 284 written cautions were additional to the hundreds of verbal cautions for speeding offences which we have already referred to.

Thanks are expressed to the special constables for the efficient manner in which they carried out their duties, and it is noted that the demands made upon them were more exacting and more frequent than in any previous year.

CUMBERLAND FINANCES, 1954/55

Mr. John Watson, F.S.A.A., F.I.M.T.A., county treasurer of Cumberland, has produced his usual excellent summary of the year's working: a review of the accounts by finance committee chairman F. G. Gaskarth opens the booklet and is followed by tables illustrative of main county activities.

The county precept of 19*s.* 1*d.* was the same as in the previous year and the proportion of county expenditure met from rates remained constant also at just under a quarter of the whole.

The year's working resulted in a surplus of £35,000 instead of an estimated deficit of £3,000, the changeover being due to underspending by committees and the receipt of an unusually large balance from rating authorities on the ascertainment of the produce of the county precepts for the previous year. Underspending by committees was relatively not large and Mr. Gaskarth congratulates them on keeping within their estimates.

The substantial income of £780,000 from exchequer equalization grant will be increased in future as the revaluation has raised the average level of assessments in the county by 50 *per cent.* as compared with the national average of 72 *per cent.*

About a tenth of capital expenditure was met direct from revenue or from capital moneys in hand, loans of £350,000 being raised to meet the balance. Total debt is £2,600,000 on which the average rate of interest was 3·6 *per cent.*, and practically all the external debt was

raised from the Public Works Loan Board. Like his colleagues, Mr. Watson will now perforce have to seek pastures new in his quest for additional capital. Looking back over the years we note that Cumberland debt achieved its lowest point since 1889 in 1944/45: at the latter date it totalled no more than £42,000.

Total revenue expenditure for the year amounted to £4¼ million of which the education service required over £2¼ million. Gross expenditure on highways (including trunk roads) did not quite reach £700,000 but because of differences in the rate of grant on the two services net rate costs of education were £700,000 and highways £355,000. Cumberland has a higher than average standard of staffing on its education service: overall the number of children per teacher is no higher than 23, details being as follows:

Type of school	*No. of children on roll*	*No. of children per teacher*
Nursery	40	40
Primary	26,600	25
Modern	4,600	20
Grammar	3,700	17
Technical	270	19
Special	40	11
Total	35,250	23

The county council employed at March 31, last, 5,100 staff of whom 1,500 were teachers.

About a quarter of the total investments of £1,300,000 have been utilized for county council capital purposes: we imagine this proportion will rise steadily under present monetary conditions.

GLEANINGS FROM THE PRESS

News Chronicle. March 6, 1956

MAN ASLEEP IN CAR PUZZLES COURT

The case of the man found asleep in the driving seat of a car which did not belong to him puzzled Mr. A. A. Pereira, the Greenwich magistrate, yesterday.

Joseph Ford, 45 year old docker, of Eltham, London, said he could not remember getting into the car, which the owner had left parked outside his home at Blackheath.

But he insisted on pleading guilty to being in charge of it while under the influence of drink, although the magistrate offered to adjourn the case so that he could get legal advice.

I'm not sure if I understand the law about this myself," Mr. Pereira said. And he adjourned because he needed " a little time to look up the law."

When he returned he said Ford must be considered as having been in charge of the car. And he fined him 20s. with 25s. costs and disqualified him from driving for 12 months.

In this case no doubt the learned Metropolitan Stipendiary Magistrate, Mr. Pereira, was satisfied that the defendant had assumed control of the car by getting into it and seating himself in the driver's seat, and was therefore in charge of it.

In an article on " In charge " at p. 423 of our 1955 volume, we considered the cases on the point and we expressed the opinion that " no alteration of the law in this respect is necessary, and that any attempt at a statutory definition of the phrase ' in a charge of a car,' in its connexion with the Road Traffic Act, s. 15, would lead to great confusion. The cases we have referred to, be they reported or noted, show how very different circumstances may give rise to the charge."

In a case heard at the Central Criminal Court on December 9, 1955, and reported in *The Times* of December 10, the Lord Chief Justice said that the question of whether or not a man is in charge of a car is a question of fact and not of law. We commented on that case in a Note of the Week at p. 842 of our 1955 volume.

The Scotsman. March 13, 1956

FINE FOR OWNER OF CAR THAT PARKED ITSELF

The story of the car that parked itself was told at Peterhead Police Court when Hubert D. Winchester, electrical engineer, of Alnwickhill Road, Liberton, Edinburgh, was fined £1 for not securing the hand brake properly.

Winchester left his car at Broad Street, Peterhead. He returned to find it had been moved so reported the matter to the police.

It was explained yesterday that a passer-by saw the car reverse and slowly cross the road before he realized it was a runaway. The car moved in a complete half circle and parked itself in another stance between two vehicles without damaging either.

In *Field* v. *Hopkinson* (1944) 108 J.P. 21, it was held that where an enactment creates a duty to do *either* one act *or* another, to constitute an offence there must be a failure to do *both* acts. In the course of his judgment Viscount Caldecote, C.J., said, " If an enactment forbids the doing of act A or act B, it creates two offences and a conviction of both offences on one information is bad for uncertainty. But if the enactment creates a duty to do either act A or act B, in order to constitute an offence there must be a failure to do both acts."

Regulation 91 of the Motor Vehicles (Construction and Use) Regulations, 1955, however, creates a duty to do *both* act A (stop the engine) *and* act B (set the brake) and therefore an offence is committed if there is a failure to do *either*, when leaving a motor vehicle on a road unattended. We have always advised that such is the case. We can now quote judicial authority for our opinion in the case of *Butterworth* v. *Shorthose*, to which we refer in our Note of the Week at p. 97, *ante*.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PROSTITUTION

Mr. R. Stokes (Ipswich) asked the Secretary of State for the Home Department in the Commons what evidence the Committee on Homosexuality and Prostitution had asked for or received, other than police evidence, on the operation of the Vagrancy Act, 1898, s. 1, subs. (1), (2) and (3), which dealt with male persons knowingly living on the earnings of prostitution wholly or in part and what fines were imposed on the five brothel keepers convicted in 1955 in West London.

The Secretary of State for the Home Department, Major Lloyd-George, said he understood that the Committee had received information on that matter from police, magistrates, lawyers, social workers and others. Of the five persons referred to in the second part of the question, one was conditionally discharged, two were fined £30 each and two were fined £25 each; all four of those fined were ordered to pay costs.

PERSONALIA

APPOINTMENTS

Mr. Harold Gomm, clerk to Kearsley, Lancs., urban district council, has been appointed clerk to Bredbury and Romiley, Cheshire, urban district council. Mr. Gomm hopes to commence his new duties in about three month's time, when he will succeed Mr. William McIntyre, *see* our issue of February 18, last.

Mr. Anthony Walter Richmond, clerk to the justices for the Strand division of the county of London since 1939, has been appointed first clerk to the justices for the Westminster division, as from July 1, next. Mr. Richmond was admitted in January, 1926.

Mr. W. E. Downs, a member of the staff of Brentford, Middx., petty sessional division for nine years, has been appointed senior assistant to the justices' clerk at Brentford. Mr. Downs succeeds Mr. R. Garner, who has resigned.

Mr. Roy Oxspring Barlow, LL.B., at present assistant solicitor to the county borough of Leeds, has been appointed to a similar position with the county council of Derbyshire. The appointment is an additional one.

Mr. A. C. Stone, chief clerk of the Oxford Probate Registry, left at the end of March to take up the appointment of district probate registrar for Norwich.

Miss Joan M. Archer has been appointed a probation officer to serve the Essex probation area. She is at present serving as probation officer in the Worcestershire probation area.

Mr. D. G. A. Low has been appointed an additional whole-time probation officer in the Berkshire probation area. He will commence his duties on April 3, 1956, on the completion of his training with the Home Office Probation Advisory and Training Board.

RESIGNATION

Mr. J. Henwood-Jones, town clerk of Aberystwyth, Card., is to resign.

OBITUARY

Mr. William Gwyn Morgan, clerk to Wednesfield, Staffs, urban district council since 1952, has died.

Mr. Thomas Ellison, formerly deputy town clerk of Sutton Coldfield, Warwickshire, has died.

Mr. Henry William Stephens, for many years registrar of Winchcombe, Glos., has died. Mr. Stephens, of the firm of Messrs. H. W. Stephens & Gosling, solicitors, of Winchcombe, was admitted in April, 1893.

THE DOCTRINE AND DISCIPLINE OF DIVORCE

It would be disrespectful to say of the Royal Commission on Marriage and Divorce that it has conceived and brought forth a mouse; the 405-page product of its labours is big and lively enough, but shows distinct traces of its hybrid parentage. Reformers cannot but reflect, with a sigh, that its offspring is likely to be seriously retarded in development, having regard to the inordinate time that its predecessor took in growing up. The Gorrell Commission reported in 1912; twenty-five years were to elapse before the recommendations of the majority, or some of them, attained the adult stature of an Act of Parliament—the Matrimonial Causes Act, 1937, which was based upon Sir Alan Herbert's Private Bill. It is a matter for speculation how many of the present recommendations will prove to have been stillborn, how many will die in infancy, and how long it will take the remainder to reach the healthy maturity of the Statute Book.

From the reformist point of view, the most disquieting symptom is the view, held by 18 of the 19 members of the Commission, that the present provisions of divorce law, based upon the doctrine of the matrimonial "offence," should be retained. On the other hand, nine members admit at least the principle that a marriage should be dissolved if it has irretrievably broken down, though the enunciation of the principle is surrounded by so many "ifs" and "buts" that it is likely to be stultified in practice. The insistence of four of these nine members that, even after seven years' separation, the "guilty" spouse should not be permitted to petition for divorce against the objection of the "innocent" partner, is a weakness that goes to the very root of the question. For it indicates once more that even the liberal minority remain obsessed with the outmoded idea that dissolution of an unworkable marriage is, or should appear to be, a "penalty," to be imposed by the "innocent" upon the "offending" party, or (worse still) that the "innocent" party should retain the right to "punish" the other partner by holding him or her to the legal bond of matrimony when the real ties of respect, affection, mutual support and cohabitation have rotted away. Only one member—Lord Walker—has had the full courage of his convictions, putting forward the view that, after three years' separation, either spouse should be enabled to satisfy the court that "the facts and circumstances affecting the lives of the parties adversely to one another are such that it is impossible that an ordinary husband and wife would ever resume cohabitation."

One is forcibly reminded of the Musical Banks in Samuel Butler's *Erewhon*, and of the two varieties of money in current use—respect for the one being based on precept, tradition and lip-service (though it is of no practical utility), while the other, though universally recognized and sought after in private use and daily life, is publicly decried. So it is with these vexed questions of marriage and divorce. Bernard Shaw put the issue, in his usual forceful manner, 53 years ago in *Man and Superman*.

> "Those who talk most about the blessings of marriage and the constancy of its vows are the very people who declare that, if the chain were broken and the prisoners left free to choose, the whole social fabric would fly asunder. You cannot have the argument both ways. If the prisoner is happy, why lock him in? If he is not, why pretend that he is?"

It is an open secret that, under the present system, there is virtually divorce by consent; if anyone doubts the truth of that saying, let him consider the overwhelming preponderance of undefended as compared with defended causes. We make so bold as to say that the vast majority of matrimonial "offences"—particularly adultery and desertion—would never be committed at all if they did not afford the most obvious and convenient means, recognized and, indeed, insisted upon by the law, for getting rid of an unwanted marriage. This is not the same as saying that a large majority of petitioners are guilty of collusion, connivance or perjury. But it is a grave scandal nevertheless; and it does the moralist no credit to insist, as have a majority of the Royal Commission, on putting the cart before the horse. Happily married spouses are not deterred from misconduct or desertion by the fear of dissolution; the very idea is absurd; and those that are unhappily married, and chafing against the yoke, will seek the means nearest to hand to secure their freedom.

On the religious aspect of the question there is much to be said, but restraint is necessary to avoid offending individual susceptibilities. Two points may, however, be briefly mentioned. The first is that, while all good citizens must deplore the prevalence of unhappy marriages and broken homes, it cannot enhance the respect for religious observance when the leaders of the various churches speak with different voices—particularly on the question of the remarriage of divorced persons. The second is that while, under our Constitution, the Monarch is the Head of the National Church, supreme among the Three Estates of the legislature, and the Fountain of Justice, yet divorce and the remarriage of divorced persons are permitted by law and recognized as valid by the courts, but regarded as unlawful by the National Church. This is an anomaly to which the Royal Commission might well have directed their attention, bearing in mind the warning words of that great Puritan, John Milton, on this very subject:

> "Let not England forget her precedence of teaching nations how to live."

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 20

SOLICITORS (AMENDMENT) BILL—read 3a.

Thursday, March 22

COPYRIGHT BILL—read 3a.
HOUSING SUBSIDIES BILL—read 3a.
RABBITS BILL—read 2a.

HOUSE OF COMMONS

Thursday, March 22

TEACHERS (SUPERANNUATION) BILL—read 3a.

ADDITIONS TO COMMISSIONS

SOUTHEND-ON-SEA BOROUGH

Mrs. Edith Bell, Alfoxden House, Belfairs Close, Leigh-on-Sea.
Gordon Allen Blythe, 57 Mayfield Avenue, Southend-on-Sea.
Mrs. Dorothea Alice Cloke, 18 Mannering Gardens, Westcliff-on-Sea.
Mrs. Joan Phyllis Dixon, 14 Britannia Gardens, Westcliff-on-Sea.
Mrs. Winifred Elizabeth Mussett, 75 Lansdowne Avenue, Leigh-on-Sea.
Ralph Oliver Geoffrey Norman, M.B.E., M.B., B.Ch., M.R.C.S., L.R.C.P., St. Andrews, Elm Grove, Thorpe Bay.

YORKS (EAST RIDING) COUNTY

Mrs. Irene Allison, Wyngarth, Algarth, Pocklington.
Lady Ruth Alice Hannah Mary Wood Irwin (Lady Irwin), Great Givendale, Pocklington.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Husband and Wife—*Maintenance order—Revival of bastardy orders made against husband before marriage.*

A has applied to my justices for an order against her husband B on the grounds of desertion and failing to maintain. She has three children, the youngest being born since her marriage to B and the two elder children having been born while she was living with B before marriage, and before A was divorced by her first husband. The two elder children were not legitimized by the subsequent marriage of A and B. In respect of these two children A has obtained affiliation orders against B and subsequent thereto A married B. Presumably the order to be made by my justices on the application for maintenance can only operate in favour of A and her youngest child. Can A also make application to revive the two affiliation orders against B (Magistrates' Courts Act, 1952, s. 53) or can she by reason of her husband's desertion, now take proceedings as a single woman ?

In view of *Mooney* v. *Mooney* [1952] 2 All E.R. 812; 116 J.P. 608, it would appear that this latter alternative is not available to her.

S. PERPLEXED.

Answer.

A woman need not establish her position as a "single woman" in order to be able to enforce an affiliation order which she obtained when she had that status. Her marriage does not, as a rule, prevent enforcement of the order, *Sotheron* v. *Scott* (1881) 45 J.P. 423 and *Hardy* v. *Atherton* (1881) 45 J.P. 683. Obviously, however, if the mother marries the putative father she cannot enforce payment under the order while she is living with her husband and he is maintaining her and the child.

We consider the position in the present case to be that the affiliation orders have been in a state of suspension and can now be enforced without proceedings for revival.

We agree that only the youngest child can be included in the maintenance order to be made on the wife's application.

2.—Magistrates—*Practice and procedure—Indictable offence—Defendant incapable of giving intelligible consent to summary trial—Procedure.*

I refer to your answer to P.P. 5 in your issue of September 17, last, I would be obliged if you could inform me of any authority for your opinion, which, I see, coincides with the present opinion of the learned editors of *Stone*, though in their earlier note to the repealed but virtually identical s. 24 of the Criminal Justice Act, 1948, they expressed a contrary view. Section 30 seems to me, with great respect to your opinion, to be directed to facilitating procedure against a person about whose state of mind there is, from the commencement of the proceedings, some doubt, and it is to be noted that form No. 31 prescribed by the 1952 rules makes no provision for a recital of the defendant's consent to summary trial.

J. SEYNO AGAIN.

Answer.

We adhere to our former answer. Section 30 applies only where a person is "charged . . . with an act or omission as an offence punishable on summary conviction with imprisonment" and the court has to be "satisfied that he did the act or made the omission charged." Unless and until a defendant who is charged with an indictable offence (to which s. 19, Magistrates' Courts Act, 1952, applies) consents to summary trial that offence is not, in our view, one punishable on summary conviction, and the court has no jurisdiction to consider whether he did the act or made the omission charged. It can consider only whether there is evidence to justify his committal for trial.

In view of the clear wording of the section we do not think any contrary inference can be drawn from form No. 31.

3.—Magistrates—*Practice and procedure—Information for summons—Not in writing—Two or more informations in one document.*

Are the following practices in accordance with the Magistrates' Courts Act, 1952?

(*a*) A summons is issued by a justice on the verbal information of an informant. No written form of information is prepared at all.

(*b*) Two informations are set out in one document in the following manner:

"The information of AB who states that CD on —— at —— committed the following offences:

1. Did drive a motor vehicle on a road in a built up area at a speed exceeding 30 miles per hour: contrary, etc.

2. Did use on a road a motor vehicle the braking system of which was not maintained in good and efficient working order and properly adjusted: contrary, etc.

(Sgd.).....

Taken, etc.

J.P.

Justice of the Peace for the County first aforesaid."

As magistrates' clerk I contend that r. 4 (1) dispenses with the necessity of a written information for a summons and that by r. 14 (2) two informations may properly be set out as shown in (*b*) above. The local police inspector is of opinion that an information must in all cases be in writing and that each information must be on a separate piece of paper.

J. SEAGER.

Answer.

We agree with our esteemed correspondent.

4.—Public Health Act, 1936, s. 47—*Water closet in place of privy—Building containing apparatus.*

My council are proceeding to secure conversions to water closets under s. 47 of the Public Health Act, 1936. I would appreciate guidance on the question of "necessary works" referred to in s. 47 (2) and "expenses reasonably incurred" in s. 47 (3) and (4). The present primitive sanitary facilities are housed (in the main) in dilapidated structures which, for obvious reasons, are often some distance from the house. Water closets can be provided practically against the rear wall of the house. In fact it is desirable that the former walk down the garden should be eliminated. In short the council feel the new water closets provided should not be in the same position as the older type of appliance which they replace. To do this necessitates the construction of a brick structure to house the new water closet. Is the erection of such a brick structure a "necessary work," and are the expenses of so doing "reasonably incurred" within the meaning of s. 47 where:

(*a*) the new water closet is re-sited and brought nearer the house than the closet it is replacing;

(*b*) there is no material change in the siting but, because of the dilapidated nature of the structure housing the present appliance, it is unsuitable for housing the new water closet?

PINEP.

Answer.

(*a*) and (*b*). No, in our opinion. The expression "closet" is equivocal, and, by etymology, ought to mean the room or other enclosure within which the apparatus is placed. It still bears this meaning in everyday speech. But in the Public Health Acts from 1848 onwards it has been used for the apparatus, and the context in s. 47 seems to limit the works to those associated with the functioning of the apparatus, and not to cover the building housing it.

5.—Public Health Acts Amendment Act, 1907, s. 86—*Old metal dealers—Itinerant dealers.*

The Secretary of State has made an order applying the provisions of the above section to this rural district. Old metal and marine store dealers whose places of business, warehouses, etc., are in an adjoining town, purchase old metal, etc., in this rural district. They are presumably registered in the adioining town, and I should like your advice as to whether they should also be registered with this council, as they carry on business in their area.

ASRUR.

Answer.

We incline to the view that the dealer must be registered in each district (being a district where the section is in force) in which he trades. We gave reasons at 116 J.P.N. 642; *see* also 117 J.P.N. 730.

6.—Road Traffic—*Regulation of traffic by police—Authority—Obstructing police engaged in this duty.*

A is accused of obstructing the police in the execution of their duty. What A has done is to take up a position on the highway, which has the result of obstructing traffic. A is well known by name to the traffic control policeman but upon refusing to move is dragged from the highway and arrested. The place is a rural district without any special statutes or byelaws applicable to the case.

1. Under what authority do the police direct traffic and are pedestrians obliged to comply with the police directions?

2. Is it an obstruction of the police in the execution of their duty to make it difficult for drivers of vehicles to comply with police signals? JOUGHIR.

Answer.

1. It is stated in *Moriarty's Police Law* that: "the police in pursuance of their duty to maintain order have a general power to regulate traffic so that every person may freely pass and repass on the highway." There are also various statutory powers dealing with the regulation of traffic on particular occasions, *e.g.*, Metropolitan Police Act, 1839, s. 52. There is at present no penal provision which requires pedestrians to obey a traffic policeman's signal.

2. This question cannot be answered in general terms, but on the facts of a particular case it might well be held that a pedestrian who deliberately so acted was obstructing a policeman in the execution of his duty.

7.—Road Traffic Acts—*Speed offences—Conditional discharge—Obligation to endorse in the absence of special reasons.*

Is a court required to follow the principle laid down in *Surtees* v. *Benewith* [1954] 3 All E.R. 261, and *Dennis* v. *Tame* (1954) 118 J.P. 358, in cases to which the Road Traffic Act, 1934, s. 5 (1) applies, *i.e.*, to find special reasons for not endorsing the licence before it can grant an absolute or conditional discharge in respect of an offence within s. 5?

If not, and if a court is able to grant an absolute or conditional discharge in the absence of any special reason where it considers it to be appropriate, how is the Road Traffic Act, 1934, s. 5 (1) to be reconciled with the Criminal Justice Act, 1948, s. 12 (2), *i.e.*, is the endorsement of the licence a disability within the meaning of the last mentioned section? JOTTEN.

Answer.

The problem is not the same as in the case of disqualification. We do not think that an endorsement is a disability within the meaning of s. 12 (2), *supra*, because we consider that "disability" means something which applies to all persons equally and which in law disables or prevents the person concerned from doing something he would otherwise be entitled to do, *e.g.*, holding some office. Therefore, even though a "speed" offender be conditionally discharged, in the absence of special reasons his licence must be endorsed.

8.—Road Traffic Acts—*Vehicles (Excise) Act*, 1949, *and registration and licensing regulations—General trade licence—Use for purpose not allowed by the regulations—Offence.*

A Scammell lorry carrying general trade plates was found by the police to be carrying on a road a bulldozer which had been used for the purposes of levelling land at a farm, and which went on to do similar work at another farm. The evidence in this case is sufficient to justify a prosecution for unlawful use of a vehicle upon a public road under a general trade licence for a purpose other than a purpose for which such vehicle was authorized to be used under such licence by art. D (4) of reg. 29 of the above regulations. The penalty for breach of these regulations is, as you know, a fine not exceeding £20.

The point has occurred to me that it may also be possible if the above offence is proved, to prefer a charge under the Vehicles (Excise) Act, 1949, s. 15, for using a vehicle on a public road without there being a licence in force. This offence carries with it an Excise penalty of £20, or, alternatively, an Excise penalty equal to three times the amount of the duty chargeable in respect of the vehicle. When you consider that in this case the annual rate of duty for the vehicle is £168 12*s.* 6*d.* it will be realized that the penalty which could be imposed under the Act is somewhat substantial compared with the maximum fine of £20 under the regulations.

Two matters at once spring to mind in connexion with the possibility of preferring a second information, namely (i) am I right in saying that once it has been found that this lorry was being used for an unauthorized purpose under a general trade licence it could be said, for the purpose of s. 15 of the Act of 1949, that the vehicle was being used without a licence and (ii) quite apart from the legal aspect, is it right and proper that a prosecution should seek two punishments in respect of what is virtually the same offence, that is to say the facts in both cases would be identical?

My own view is that on purely legal grounds I would be quite prepared to lay an information under the 1949 Act in addition to one under the regulations and argue along the lines mentioned above, but I feel that the proper course to adopt would be simply to lay one information under the regulations. I have looked through the various law reports but have been unable to discover one which deals with this particular point, so that any answer you may be able to give me will be most helpful and greatly appreciated. JORY.

Answer.

We notice that s. 15 of the Act includes specifically one possible offence by the holder of a trade licence, and we think that this excludes, by inference, the possibility of proceeding against such a licence holder under the section in respect of any other misuse of his licence. We consider, therefore, that in this case proceedings can be taken only in respect of the contravention of reg. 29, art. D (4).

It is to be noted that as from November 17, 1955, the appropriate regulations are those of 1955.

9.—Shops Act, 1950—*Sunday sales—Box tricycles and mobile shops.*

I have had occasion to refer to P.P. 10 at 119 J.P.N. 710, and I am wondering whether in making your answer you took into consideration the effect of s. 58 of the Shops Act, 1950, which replaces s. 13 of the Shops (Sunday Trading Restriction) Act, 1936. In making this comment I do not in any way suggest that the piece of ground upon which a mobile shop stands is not a "place" for the purposes of s. 58. SOWBER.

Answer.

We agree that s. 58 is also in point and appears to support our view that an offence has been committed. We are obliged to our correspondent.

10.—Street Collection—*Statutory restrictions where purpose not charitable.*

A political party is proposing to hold a street procession culminating in a rally. During the procession the organizers would like to take a collection from among the people on the street and again, of course, at the rally which will be in a public place. Such a collection appears to be caught by the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, s. 5, and it will be necessary to comply with any regulations which may have been made. The House to House Collections Act, 1939, seems to apply only to a collection for a "charitable purpose," which means any charitable, benevolent, or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law. A collection for a political party seems not to fall within that definition. Do you agree that if such a collection is made the only obligation is to comply with any regulations made under the Act of 1916? ARYO.

Answer.

We agree.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

ST. PANCRAS BOROUGH COUNCIL

Appointment of Law Clerk

APPLICATIONS invited for above appointment in Town Clerk's Dept.—A.P.T. III–IV (£640—£885, plus London weighting allowance according to age). Candidates should have considerable experience in conveyancing and some general experience of work in a legal office. Previous local government experience an advantage. Applicants must disclose if related to any member or senior officer of the Council. Canvassing disqualifies. No housing. Applications by letter with full particulars of qualifications, present and previous appointments, experience, etc., and names of three referees, must be received by April 14, 1956.

R. C. E. AUSTIN,
Town Clerk.

St. Pancras Town Hall,
Euston Road,
London, N.W.1.

SHREWSBURY BOROUGH AND MID-SHROPSHIRE PETTY SESSIONAL DIVISION

Justices' Clerk's Assistant (Male)

APPLICATIONS are invited for the post of second assistant (male) to the Clerk to the Shrewsbury Borough and Mid-Shropshire Justices. Salary according to experience will be within the General Grade II scale agreed by the Joint Negotiating Committee for Justices' Clerks' Assistants, namely £530 × £20—£610 per annum. Applicants should have completed their National Service, be competent shorthand-typists and have a good knowledge of the work of a Justices' Clerk's office. The post is superannuable, subject to medical examination and one month's notice on either side. Applications, stating age, education, qualifications and experience, together with three testimonials, to G. C. Godber, Clerk to the Magistrates' Courts Committee, Shirehall, Shrewsbury, by April 23, 1956.

Amended Advertisement.

BOROUGH OF BARNSTAPLE

Assistant Solicitor

APPLICATIONS from Solicitors are invited for the above appointment. Salary £725—£970 per annum according to experience. Local Government experience desirable but not essential.

Housing accommodation available if required.

Applications with full particulars as to age, date of admission and experience, together with the names and addresses of two referees, should reach me at The Castle, Barnstaple, N. Devon, not later than April 19, 1956.

F. J. BROAD,
Town Clerk.

BOROUGH OF BEXLEY

Assistant Solicitor

SALARY £725 × £35 — £970 per annum. Minimum salary of £830 after two years' legal experience from date of admission. "London Weighting" allowance of £20 or £30 per annum according to age also payable. March finalists may apply.

Forms of application, with conditions of appointment, may be obtained from the undersigned, to whom completed forms must be returned by April 23, 1956.

Canvassing will disqualify.

ARTHUR GOLDFINCH,
Town Clerk.

Council Offices,
Bexleyheath,
Kent.

BOROUGH OF ILFORD

JUNIOR Assistant Solicitor required on the staff of the Town Clerk. Salary range £725 × £35—£970 p.a. plus London Weighting of £20 p.a. under 26 or £30 p.a. at 26 or over. Commencing salary to be determined in the light of qualifications and experience. Appointment permanent, superannuable and subject to medical examination and to the National Scheme of Conditions of Service. Previous local government experience is not essential.

The council will, if necessary, provide housing accommodation on a service tenancy.

Applications on forms obtainable from the Town Clerk, Town Hall, Ilford, Essex, should be submitted by April 21, 1956.

March 27, 1956.

COUNTY OF ESSEX

Appointment of Assistant Prosecuting Solicitor

APPLICATIONS are invited from solicitors with experience of advocacy. The person appointed will be required to conduct prosecutions in the Magistrates' Courts of the County on behalf of the Police and the County Council. Salary in accordance with qualifications and experience not exceeding £1,200 a year. Post superannuable. Canvassing forbidden. Applications, stating age, education, qualifications and experience, together with names and addresses of three referees, to County Clerk, County Hall, Chelmsford.

COUNTY BOROUGH OF WOLVERHAMPTON

Appointment of Town Clerk and Clerk of the Peace

APPLICATIONS are invited for this appointment which will become vacant on September 17, 1956. Applicants must be Solicitors and possess a sound knowledge of and experience in Local Government law, practice and administration.

The recommendations regarding salary and conditions of service of the Joint Negotiating Committee for Town Clerks will apply to the appointment.

Full particulars and form of application may be obtained from me, and applications must be received by me, not later than Friday, April 20, 1956.

A. G. DAWTRY,
Town Clerk.

Town Hall,
Wolverhampton.

ESHER URBAN DISTRICT COUNCIL

UNADMITTED Legal Assistant (male or female) required, possessing good conveyancing and general legal experience. Previous Local Government service not essential.

Salary A.P.T. III (£670 × £25 — £795). Permanent superannuable appointment. No housing accommodation offered. Applications, on forms obtainable from the Clerk of the Council, Council Offices, Esher, Surrey, to be submitted by April 25, 1956.

COUNTY BOROUGH OF EAST HAM

Law Clerk

Candidates must have had experience with local authority or in a solicitor's office.

Salary, Grade A.P.T. 1 £530—£610 plus London Weighting.

Further details and application form returnable by April 18, from Town Clerk, Town Hall, East Ham, E.6.

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